IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.436 OF 2005
IN
NOTICE OF MOTION NO.3459 OF 2004
IN
SUIT NO.3419 OF 2004

United Biotech (P) Ltd. & Anr. — Appellants
vs.
Schering Corporation & Anr. — Respondents

Mr.V.R.Dhond with Mr.H.W.Kane for the appellants.

Dr.Virendra Tulzapurkar, senior counsel i/b.
M/s.Crawford Bayley with Mr.H.Toor & Co. for the respondents 1 and 2.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 8th August 2005

P.C.

By consent of the learned senior counsel and the counsel appearing for the parties, appeal itself was taken up for hearing.

2. The appeal is directed against the ad-interim order dated 2nd May 2005 passed by the learned motion Judge pending notice of motion. The ad-interim order was granted by the learned motion Judge in terms of prayers (g) and (h) of the notice of motion and at the same time, the learned motion Judge stayed the operation of the ad-interim order until 8th June 2005.

3. The defendants have come up in appeal challenging the ad-interim order granted by the learned motion Judge in terms of prayers (g) & (h). By the order dated 8th June 2005 we extended the said order granted by the learned motion Judge staying the ad-interim order. The appeal was admitted on 6th July 2005 and the ad-interim order that has been granted by the learned motion Judge remains stayed.

4. On the suggestion of the Court, the learned counsel for the appellant and the learned senior counsel for the respondents agreed that instead of appeal being considered on merits by us, it would be in the interest of justice if the notice of motion itself is heard and disposed of finally by the learned motion Judge.

5. In this view of the matter, we are satisfied that the merits of the diverse contentions raised in the appeal need not be examined by us and the notice of motion be heard expeditiously by the learned motion Judge. The ad-interim order granted by the learned motion Judge in terms of prayers (g) & (h) which in fact has not come into operation is set aside.

6. The defendants shall file reply affidavit within two weeks from today with an advance copy to the plaintiffs.

Rejoinder, if any, may be filed by the plaintiffs within two weeks thereafter.

7. After the reply and rejoinder are filed, liberty is granted to the plaintiffs to apply to the learned motion Judge for fixing the date of the hearing of the notice of motion.

8. We clarify though it is not necessary that neither the impugned order nor the order that has been passed by us today shall influence the consideration of the notice of motion by the learned motion Judge which obviously shall be heard and decided on its own merits.

9. We record and accept the statement of the learned counsel for the defendants that the defendants would keep proper account in respect of the subject medicine NETMICIN.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)